STATE OF MICHIGAN

COURT OF APPEALS

VINCENT SALVADOR MUNOZ, Plaintiff-Appellee,	UNPUBLISHED June 15, 2006
v	No. 258969 Calhoun Circuit Court
SHELLY KAYLENE MUNOZ, Defendant-Appellant.	LC No. 02-003216-DM

Before: O'Connell, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of divorce, challenging the trial court's failure to include certain language in the judgment and the valuation of the parties' former business. We affirm.

The parties had a child in 1993 and married in 1995. After approximately six years of marriage, the parties separated. Plaintiff filed for divorce on August 13, 2002. In February 2003, a temporary consent order was entered regarding custody, parenting time, and child support. The parties also advised the trial court, as reflected in the case scheduling order, that they only planned to address the division of their marital property at the bench trial.

For purposes of property division, the trial court determined the value of the marital property as of August 13, 2002, with the exception of defendant's pension and 457 deferred contribution plan. The court found that a janitorial cleaning service formerly owned by the parties, and primarily run by defendant, was worth $142,000. It awarded the business to defendant. The marital home was appraised at $105,000, and the court awarded that asset, along with its mortgages, to plaintiff.[1] Plaintiff also received the entire value of his pension and 457 deferred compensation plan. Because the parties had not indicated in the scheduling order that they planned to contest the provisions of the temporary consent order regarding custody,

[1] The evidence indicated that the liens on the property exceeded the property's face value, leaving negative equity.

parenting time, and child support at the bench trial, the trial court simply included the terms of the temporary consent order in the final judgment of divorce.

Defendant first argues on appeal that the judgment of divorce should have reflected the trial court's decision that the judgment did not foreclose defendant from asserting a change of circumstances that occurred prior to the entry of the judgment in any future motion to modify custody, parenting time, and child support. We first note, importantly, that counsel for plaintiff prepared and submitted the judgment of divorce under the seven-day rule, MCR 2.602(B), and although defendant filed an objection to the then proposed judgment, the objection had nothing to do with a demand to insert the language now at issue. A hearing was held on the objection on October 18, 2004, but there is no transcript of the hearing, and "appellant is responsible for securing the filing of the transcript . . . ." MCR 7.210(B)(1). Thus, we have no record of any oral arguments presented at the hearing that might have touched on the subject.[2] On the basis of this record, defendant cannot now complain about language that should have been included in the judgment when defendant herself took no action to have the court at least consider the inclusion of such language. The issue was waived, and reversal is unwarranted. Moreover, on careful review of the trial transcript, it appears that the only definitive statement that the trial court actually made on the matter was that defendant could certainly bring a motion to change custody in the future. The court did not specifically articulate that such a future motion could be based on a change of circumstances that occurred prior to the divorce trial and judgment. Defendant fails to cite any legal authority mandating the inclusion of the requested language absent a court ruling on the issue. Furthermore, within the time period between the entry of the trial court's order denying defendant's motion to amend the temporary consent order[3] regarding custody and parenting time and the date of trial, defendant never filed a new motion concerning custody or parenting time. For the most part, the evidence at trial focused on, as consistent with the scheduling order, the division of marital property. Additionally, defendant's claim of resulting prejudice is speculative because it is unknown what the trial court may rule on the issue if confronted with a future motion to change custody, parenting time, and child support; therefore, we can only conclude that, assuming error, it was harmless. MCR 2.613(A). Accordingly, reversal is unwarranted.

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[2] Defendant does not make any claim in her appellate brief that the issue was broached at the hearing to settle the divorce judgment. Defendant claims that she filed a proposed judgment of divorce along with her objection under the seven-day rule that contained the language demanded; however, there is no such document in the lower court record that we received, the lower court docket sheet does not reveal such a filing, and defendant's proof of service relative to the objection makes no mention of a proposed divorce judgment.

[3] The trial court continued the temporary consent order. Defendant continually speaks of hoping to rely on circumstances that arose before judgment of divorce was entered and after the entry of the temporary consent order, evidently forgetting that she did in fact file a motion to amend the temporary order six months after its entry, which motion addressed the circumstances that had arisen up to that point.

Defendant additionally argues that the trial court erred because it did not consider each of the best interest factors before including the provisions of the temporary consent order in the judgment of divorce. Defendant fails to include this issue in her statement of questions presented, as required by MCR 7.212(C)(5). Therefore, this issue is not properly before us for review. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 172; 568 NW2d 365 (1997). Furthermore, the scheduling order expressly indicated that there was no issue regarding custody, parenting time, or child support, and while MCR 2.401(B) provides that a party can file a motion to modify a scheduling order, the record contains no such motion filed by defendant, nor do the filings in the lower record reveal that defendant clearly and timely placed the court on notice that these issues needed litigating at trial.

Defendant next argues on appeal that the trial court erred when it found that the cleaning business owned by the parties was worth $142,000. We disagree. The trial court's valuation of a particular marital asset constitutes a factual finding. We review the trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding is clearly erroneous if, after a review of the entire record, we are left with the definite and firm conviction that a mistake has been made. *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002).

Defendant argues that instead of basing its valuation of the business on the appraisal performed by business valuation analyst Norman Baczkiewicz, the trial court should have considered her testimony and opinions regarding the value of the business. The trial court concluded, however, that defendant was not a credible witness. It specifically found that her claims that the business was valueless and that she sold the business for $6,800 in March of 2003 were not accurate representations of the actual value of the business in August 2002. This Court gives regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C). Therefore, we defer to the trial court's conclusion that defendant's testimony was not credible and should be disregarded.

We additionally note that defendant provided no other evidence indicating the value of the business in August 2002, nor did she disclose in a timely manner an expert witness to appraise the value of the business at the time plaintiff filed for divorce. We find no reason to believe that the valuation of the business performed by plaintiff's expert was erroneous, and we conclude that the trial court did not err when it relied on and adopted that appraisal to determine that the business was worth $142,000 when plaintiff filed for divorce in August 2002. Because we conclude that the trial court did not err when valuing the business at $142,000, we additionally find that the trial court's division of property was fair and equitable. Defendant was awarded the $142,000 business, and plaintiff was awarded the $105,000 house and the full value of his pension plan and 457 deferred compensation plan, but, because of mortgages, the house had negative equity. The difference in the property division award was explained by the trial court, and we accept the court's ruling as equitable. *Gates v Gates*, 256 Mich App 420, 423, 432; 664 NW2d 231 (2003).

Finally, defendant argues that the trial court used inconsistent dates when determining the value of different marital assets, making the division of the marital property inequitable. Defendant failed to raise this issue in her statement of questions presented as required by MCR

7.212(C)(5), and she fails to provide supporting authority for her position; therefore, we deem the argument waived. *Joerger*, *supra* at 172; *Byrne v Schneider's Iron & Medal, Inc*, 190 Mich App 176, 183; 475 NW2d 854 (1991). Moreover, this Court has stated that "[i]t is well settled that decisions regarding the time of valuation of property in a divorce action are matters within the discretion of the trial court." *Gates, supra* at 427. We find no abuse of discretion on this issue.

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ Kurtis T. Wilder